CITY OF MORGAN HILL JOINT SPECIAL AND REGULAR CITY COUNCIL, SPECIAL REDEVELOPMENT AGENCY, AND SPECIAL MORGAN HILL FINANCE AUTHORITY COMMISSION MEETING MINUTES – JULY 7, 2004

CALL TO ORDER

Mayor/Chairman/President Kennedy called the special meeting to order at 6:00 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency/Commission Members Carr, Sellers, Tate and

Mayor/Chairman/President Kennedy

Late: Council/Agency/Commission Member Chang (was not in attendance for closed session)

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency/Commission Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

City Council and Redevelopment Agency Action

CLOSED SESSIONS:

City Attorney/Agency Counsel Leichter announced the below listed closed session items:

1

CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION

Authority: Government Code Sections 54956.9(b) & (c)

Number of Potential Cases: 4

2.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Name of Case: Hacienda Valley Mobile Estates v. City of Morgan Hill.

Case Number: United States Supreme Court 03-1571

3.

CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Authority: Government Code section 54956.9(a)

Case Name: Hacienda Valley Mobile Estates v. City of Morgan Hill Case Number: Santa Clara Superior Court, Case No. CV 807708

OPPORTUNITY FOR PUBLIC COMMENT

Mayor/Chairman Kennedy opened the Closed Session items to public comment. No comments were offered.

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ADJOURN TO CLOSED SESSION

Mayor/Chairman Kennedy adjourned the meeting to Closed Session at 6:03 p.m.

RECONVENE

Mayor/Chairman/President Kennedy reconvened the meeting at 7:03 p.m.

CLOSED SESSION ANNOUNCEMENT

City Attorney/Agency Counsel Leichter announced that no reportable action was taken in closed session.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

RECOGNITIONS

Mayor Kennedy presented a Certificate of Recognition to retiring Library Commissioner Mary Ellen Salzano and thanked her for her years of service on the Library Commission.

PRESENTATIONS

Gordon Siebert, representing the American Public Works Association, South Bay Area Chapter, presented the Public Works Department and Director of Public Works Director Ashcraft the "Award of Merit" certificate for the Butterfield Boulevard Project - Phase IV.

CITY COUNCIL REPORT

Mayor Pro Tempore Sellers applauded everyone involved with the Independence Day Inc. organization for the wonderful Fourth of July activities. He indicated that he recently returned from vacation, visiting 15 states. He said that one of the things that Council members inevitably do in travels is to see how other communities solve problems or deal with issues. He stated that he had the opportunity to visit baseball complexes in Montgomery, Alabama and Tupelo, Mississippi; including aquatics complexes and recreation centers in Colorado and other parts of the county. He said that it is always helpful to get ideas on how other communities have deal with problems. He indicated that he is currently serving on the Downtown Association as the Council's liaison and that he is looking forward toward incorporating some of the ideas he picked up. He stated that he would be serving on the economic development subcommittee in the coming months and that he is looking forward to tying what he has learned to this subcommittee as well.

CITY COUNCIL SUBCOMMITTEE REPORT

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CITY MANAGER REPORT

City Manager Tewes reported on the testing of the City's water wells for the contaminate perchlorate. He reported that all of the active and off line wells have shown none detect levels of perchlorate in recent months. However, the Condit well that has been offline since February 2003, showed a 5 parts per billion reading in the most recent testing. This level is above the detection level but below the State mandated action level. He stated that the well is offline and will remain off line. All other wells in the City have reported none detect levels, below the level of detection established by State protocol.

CITY ATTORNEY REPORT

City Attorney Leichter indicated that she did not have a report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman/President Kennedy opened the floor to public comment for items not appearing on this evening's agenda.

Marby Lee stated that as a mother of a two-year old and a frequent user of the library, she has a fear of a library site in the downtown area due to traffic. She said that traffic in the downtown has been quite heavy the past couple of years to the point the City installed florescent yellow signs to help the cars notice individuals crossing the streets. Because of the number of small children that would be using the library, it sparked a sense of danger. She stated her support of a new library but not in the downtown. She felt that the civic center was a good site for a new library.

Andrew Poth said that he had an interesting experience on July 4 walking along Peak Avenue with Marie Lamb who was collecting signatures on a petition. Ms. Lamb would ask individuals what they felt about the library being moved to the downtown. A couple of individuals supported its move to the downtown, but that a great majority of individuals supported the library at the civic center location.

Gloria Subocz expressed concern for the elderly, those in the 60 and above age range who may find transportation a problem. She noted that the bus system provides transportation to the library and is easily accessible by the adjacent elementary school children. She stated that there is a strong feeling that the library should not be moved. She did not know why the issue of the site was raised. She suggested that the Council do what it can to leave the library at the civic center site. She indicated that it has already been determined that expansion of the library would cost far less than building a two-story library that would have no trees, ponds, benches or grass but would have traffic. She requested that the Council place the question of the preferred library site location on the November 2004 ballot and let the majority of the citizens decide.

Nancy Barker stated that over the past weekend she spoke to over 200 individuals of all ages from all areas of Morgan Hill about the library. She said that more than 90% of these individuals favored the

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library location at the civic center site. She felt that the Council needs to look at what is best for the library and not what is the best for the downtown. If the Council does not want to leave the library at the civic center, she requested that the Council hold off on its decision and place the question on the ballot.

Marie Lamb stated that she had the opportunity to speak with three of the Council members today. She said that she is one of the individuals who is behind the library petition and coordinating its effort. She stated that individuals are signing a petition and entering into major discussions about the library's location. She stated that this is an extremely hot topic in the community. She said that the passions and emotions are running high and that logic supports the civic center site as the preferred site. She indicated that the vast majority of citizens are skeptical that a downtown library would truly help the community and the downtown. Citizens do not believe that a downtown location would significantly increase the sense of community. She felt that the idea of synergy is an illusion and that citizens do not buy the downtown myth. She said that the so called "library experts" might have a theory but that they do not necessarily apply to the City of Morgan Hill and its unique group of citizens in terms of the library. The most negative reaction to the petition has occurred near the Sunsweet downtown site. She stated that there is a strong sense that the civic center location is superior for meeting the needs of library users. It is a setting that is beautiful, serene, calm, would have more landscape grounds, room for an outdoor library patio and a garden that has a great view of El Toro. The civic center site has more room for expansion and there would not be a concern for parking identified with the downtown site. She stated that the downtown site is unacceptable no matter how much the Council tries to convince citizens that traffic congestion and parking would be mitigated. She felt that mitigating concerns would cost a tremendous amount of money. She said that library users are repeatingly stating that they would less likely use the library if moved to the downtown as they believe it would be an inconvenience. She requested that the Council select the civic center site as the site of preference on July 21.

JJ Vogel agreed that the library site location should be placed on the ballot. If the Council does not, he stated that he would help the civic center library proponents organize to place a citizen sponsored initiative on the ballot. He said that in light of items he has been researching and reading (e.g., problems with the golf course, library, etc.) and the lack of Council response to questions he has raised at every meeting he has attended, it is time for him to start a watch dog group, similar to the one he started in Hollister and possibly a website that will include information he uncovers. He said that he is here to help the Council and the City without charging taxpayers. He was here to carry out the work of the late Bev Freeman

Mr. Hammerist felt that citizens and the City Council are on the same side, wanting to do what is best for Morgan Hill. He stated that the citizens want to give the Council's information a fair hearing. He did not believe that there was time to do so before the July 21 meeting date where the Council will take a vote on the library site selection. Should the Council hold a binding vote on July 21 on this matter, he said that citizens will consider this an adversarial action. He stated that citizens do not want to be in an adversarial situation with the Council, but want a fair hearing. He said that citizens want to know: 1) if information is unbiased; 2) where the information is coming from; 3) what is the interest to the source of information; 4) is the information complete/relevant; 5) has the appropriate criteria been applied, drawing conclusions from the information; and 6) whose values will the Council use to make judgments about the information. He said that the citizens want fairness in the process and need time. If the

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Council will be voting on July 21, he felt that citizens will need some recourse to counter the adversarial action. He said that the citizens want the Council to advise them as to what its action will be.

Dan Craig spoke on behalf of the Morgan Hill Downtown Association and commended the Council for taking the time to look at the late comer, the downtown site. He said that the downtown will move ahead, survive and thrive with or without the library. If this is not what the community wants, he did not believe that there should be a downtown. He expressed concern that this is more about attacking the downtown. It was his belief that the decision that is pending is whether there is to be a further analysis of the downtown site. He said that there are a lot of questions and issues that need to be addressed. He was not sure that the public understands this fact. He said that the downtown merchants do not have the time to circulate a petition for a downtown library site. He stated that individuals who have viewed the downtown library site plan have provided positive responses. He was pleased that the Council was taking the downtown into consideration in the process and trusted that it would do what is best for the community when it makes its decision.

No further comments were offered.

Mayor Kennedy stated that earlier today, he sent an e-mail to Council members proposing that the question of placing an advisory vote on the November 2, 2004 ballot be agendized for the July 21, 2004 Council meeting. This would allow the Council the opportunity to discuss the option of placing a measure on the ballot. His specific recommendation is that this be an advisory vote.

City Council Action

CONSENT CALENDAR:

<u>Action:</u> On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Approved</u> Consent Calendar Items 1-15 as follows:

1. <u>SUBDIVISION APPLICATION, SD-04-06: SAN PEDRO-DICONZA</u>

<u>Action:</u> <u>Took no action</u>, thereby concurring with the Planning Commission's decision regarding approval of the subdivision map.

2. <u>AMENDED RIGHT-OF-WAY PURCHASE AGREEMENT FOR TENNANT AVENUE</u> <u>WIDENING (APN: 817-04-002)</u>

<u>Action:</u> 1) <u>Approved</u> Amended Purchase Price; and 2) <u>Authorized</u> the City Manager to Execute Purchase Agreement, Subject to Approval as to Form by City Attorney, with the Owner of APN: 817-04-002, for the Total Compensation of \$102,000 Plus Escrow and Closing Costs for the Acquisition of Portions of This Property.

3. <u>CONDOMINIUM PARCEL MAP APPROVAL FOR R.A.R. CONSTRUCTION-ADAMS</u> <u>COURT</u>

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<u>Action:</u> 1) <u>Approved</u> the Condominium Parcel Map, Including the Abandonment of a Storm Drain Easement and Temporary Turn-Around Easement on the Property; and 2) <u>Authorized</u> the Recordation of the Map.

4. PUBLIC WORKS MAINTENANCE AGREEMENTS FOR 2004-2006

<u>Action:</u> 1) <u>Approved</u> New Maintenance Agreements for: Striping and Signing, Traffic Signal Maintenance, Tree Pruning, Laboratory Services for Potable Water Sampling and Analysis, and City-wide Landscape Services; and 2) <u>Authorized</u> the City Manager to Execute the Agreements on Behalf of the City, Subject to Review and Approval by the City Attorney.

5. AWARD OF DEWITT SEWER REPLACEMENT PROJECT

<u>Action:</u> 1) <u>Awarded</u> Contract to Pacific Underground Construction, Inc. for the Construction of the Dewitt Sewer Project in the Amount of \$410,025, Subject to Review and Approval of the City Attorney; and 2) <u>Authorized</u> Expenditure of Construction Contingency Funds, Not to Exceed \$41,000.

6. <u>AWARD OF CONTRACT TO PROVIDE PUBLIC WORKS INSPECTIONS ON AN AS-</u> NEEDED BASIS

<u>Action:</u> 1) <u>Approved</u> a Professional Services Contract with Testing Engineers, Inc. (TEI) to Provide Public Works Inspection Services on an As-needed Basis, at a Cost Not to Exceed \$90,000 for Fiscal Year 2004-2005; and 2) <u>Authorized</u> the City Manager to Execute the Contract, Subject to Review and Approval by the City Attorney.

7. RESOLUTION ADOPTING THE CITY'S FLEXIBLE BENEFITS PLAN – SUMMARY PLAN DESCRIPTION AND PLAN DOCUMENT AS AMENDED AND RESTATED ON JANUARY 1, 2004 - Resolution No. 5819

<u>Action:</u> <u>Adopted</u> Resolution No. 5819, the City of Morgan Hill's Amended Cafeteria Plan: Summary Plan Description and Plan Document Effective January 1, 1997, as Amended and Restated, Effective January 1, 2004.

8. RESOLUTION ADOPTING AMENDMENTS TO DEFERRED COMPENSATION PLAN WITH HARTFORD LIFE INSURANCE COMPANY – Resolution No. 5820 Action: Adopted Resolution No. 5820.

9. ADOPT ORDINANCE NO. 1679, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1679, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT AND THE APPROVAL OF A PRECISE DEVELOPMENT PLAN FOR PHASE 6 OF THE CAPRIANO/MADRONE CROSSING DEVELOPMENT. THE RESIDENTIAL DEVELOPMENT PLAN COVERS A 68 ACRE SITE LOCATED ON THE WEST SIDE OF MONTEREY ROAD, SOUTH SIDE OF TILTON AVENUE, ON THE EAST SIDE OF

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HALE AVE. (APN's 764-09-005, 006, 007, 008, 009, 010 & 014) (APPLICATION ZA-04-01: HALE-GLENROCK BUILDERS).

10. ADOPT ORDINANCE NO. 1680, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1680, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING DEVELOPMENT AGREEMENT, DA 04-01 FOR APPLICATION MP-02-03: TILTON-GLENROCK (APNS 764-9-06, 16, 17, 32 & 33).

11. ADOPT ORDINANCE NO. 1681, NEW SERIES

Action: Waived the Reading, and Adopted Ordinance No. 1681, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1617, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-99-04: CHRISTEPH COURT - KOSICH TO INCORPORATE A SIX-MONTH EXTENSION OF TIME FOR A SINGLE DWELLING UNIT AND TO ALLOW FOR AN ALTERNATIVE MEASURE P COMMITMENT IN LIEU OF A FIVE-FOOT PATHWAY (APN 764-32-024)/(DAA-00-01: CHRISTEPH - KOSICH).

12. ADOPT ORDINANCE NO. 1682, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1682, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE DEVELOPMENT AGREEMENT, DA-03-10 FOR MP-02-14: COCHRANE – COYOTE ESTATES (APNS 728-35-008, 010; 728-36-001, 010).

13. ADOPT ORDINANCE NO. 1683, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1683, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 5.32 (MASSAGE ESTABLISHMENTS) OF TITLE 5 (BUSINESS TAXES, LICENSES AND REGULATIONS) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING REGULATION OF MASSAGE ESTABLISHMENTS AND PRACTITIONERS.

14. ADOPT ORDINANCE NO. 1684, NEW SERIES

<u>Action: Waived</u> the Reading, and <u>Adopted</u> Ordinance No. 1684, New Series, and <u>Declared</u> That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AMENDING CHAPTER 3.04

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(PURCHASING) OF TITLE 3 (REVENUE AND FINANCE) AND DELETING SECTIONS 3.04.320, 3.04.330, 3.04.340, 3.04.350, 3.04.360, AND 3.04.410 OF THE MUNCIPAL CODE OF THE CITY OF MORGAN HILL REGARDING LOCAL PREFERENCE, THRESHOLD AMOUNTS FOR BID, RECYCLED PRODUCTS, EMERGENCY EXEMPTIONS, AND DONATION OF UNUSABLE MATERIAL.

15. <u>MINUTES FOR THE CITY COUNCIL SPECIAL MEETING OF JUNE 23, 2004</u> *Action: Approved the Minutes as Submitted.*

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Council/Agency Member Tate and seconded by Mayor Pro Tempore/Vice-chair Sellers, the City Council/Agency Board unanimously (5-0) Approved Consent Calendar Items 16 and 17 as follows:

- 16. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF JUNE 16, 2004

 Action: Approved the Minutes as Submitted.
- 17. <u>JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF JUNE 23, 2004</u>
 <u>Action: Approved the Minutes as Submitted.</u>

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Agency Member Tate and seconded by Vice-chair Sellers, the Agency Board unanimously (5-0) Approved Consent Calendar Item 18 as follows:

18. MORGAN HILL DOWNTOWN ASSOCIATION (MHDA) 4TH QUARTER REPORT AND ANNUAL WORK PLAN AND AGREEMENT

<u>Action:</u> 1) <u>Accepted</u> 4th Quarter Report; 2) <u>Reviewed and Accepted</u> Fiscal Year 2004-2005 Annual Work Plan; and 3) <u>Authorized</u> the Executive Director to Negotiate and Execute an Agreement with the Morgan Hill Downtown Association (MHDA) in an Amount Not to Exceed \$97,500, Subject to Review and Approval by Agency General Counsel.

City Council Action

PUBLIC HEARINGS:

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19. PUBLIC HEARING AND ADOPTION OF RESOLUTIONS CONFIRMING FISCAL YEAR 2004-2005 ANNUAL ASSESSMENT FOR THE FOX HOLLOW-MURPHY SPRINGS ASSESSMENT DISTRICT – Resolution Nos. 5821, 5822, 5823, 5324, 5825, 5826

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Adopted</u> Resolution Nos. 5821 and 5822, Confirming the Fiscal Year 2004-2005 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, Excluding the Conte Gardens and Sandalwood Estate Zones.

Mayor Kennedy indicated that he resides within 500 feet of the Conte Gardens zone. Therefore, he would be recusing himself from this zone. He excused himself from the Council Chambers.

Action:

On a motion by Council Member Tate and seconded by Council Member Carr, the City Council, on a 4-0 vote with Mayor Kennedy absent, <u>Adopted</u> Resolution Nos. 5823 and 5824, Confirming the Fiscal Year 2004-2005 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, <u>Referring Only</u> to the Conte Gardens Zone.

Mayor Kennedy resumed his seat on the Dias.

Council Member Chang recused herself from the Sandalwood Estates zone and stepped out of the Council Chambers

Action:

On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council, on a 4-0 vote, with Council Member Chang absent, <u>Adopted</u> Resolution Nos. 5825 and 5826, Confirming the Fiscal Year 2004-2005 Annual Assessment for the Fox Hollow/Murphy Springs Assessment District, <u>Referring Only</u> to the Sandalwood Estates Zone.

Council Member Chang resumed her seat on the Dias.

20. <u>DEVELOPMENT AGREEMENT AMENDMENT, DAA-98-11: SPRING-MALONE/FILIPOWICZ – Ordinance No. 1685, New Series</u>

Planning Manager Rowe presented the staff report.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Waived</u> the reading in full of Ordinance No. 1685, New Series.

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Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council <u>Introduced</u> Ordinance No. 1685, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1487, NEW SERIES, TO AMEND THE DEVELOPMENT AGREEMENT FOR APPLICATION MP-97-22: SPRING — MALONE/FILIPOWICZ TO ALLOW FOR A ONE YEAR EXTENSION OF TIME FOR A SINGLE CUSTOM LOT BUILDING ALLOTMENT RECEIVED IN THE 1998-99 RDCS COMPETITION. (APN 767-53-012), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

21. <u>DEVELOPMENT AGREEMENT AMENDMENT, DAA-03-11: SAN PEDRO-DICONZA</u> – Ordinance No. 1686, New Series

Planning Manager Rowe presented the staff report.

Mayor/Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Waived</u> the reading in full of Ordinance 1686, New Series

Action:

On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council <u>Introduced</u> Ordinance 1686, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO DEVELOPMENT AGREEMENT, DA 03-11 TO INCORPORATE CHANGES IN THE ALLOCATIONS AND THE PHASING OF THE PROJECT FOR APPLICATION MP 02-07: CORY-SAN PEDRO PARTNERS. (APN 817-11-061), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

22. REVIEW OF THE FINAL ENVIRONMENTAL IMPACT REPORT (EIR FOR THE INSTITUTE GOLF COURSE AND MATHEMATICS CONFERENCE CENTER (Continued from 6/9/04) – Resolution No. 5827

Planning Manager Rowe presented the staff report, indicating that two actions are being requested of the Council: 1) adoption of a resolution that adopts findings and certifies the final EIR for the Institute Golf Course, the Mathematics headquarters and conference center; and 2) introduction of an ordinance, rezoning the subject property from Open Space to Planned Unit Development, exhibit C to the zoning amendment ordinance, and the environmental mitigation measures that are not currently part of the project that would be adopted as conditions of project approval. He indicated that this item was continued from a special City Council meeting held on June 9, 2004 to allow the applicant an opportunity to submit documentation in the EIR administrative record that would support alternative

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mitigation measures which were presented at the June 9 meeting. He stated that staff met with the applicant on June 18 and with the applicant's attorney and environmental consultants on July 1, 2004. He said that these meetings were held to review and discuss the applicant's equivalent mitigations that have been submitted and have been included in the Council's agenda packet. He informed the Council that the July 1 meeting also included the City's environmental consultants who are in attendance this evening. He said that a consensus was reached at the July 1 meeting regarding equivalent mitigations that could be supported based on the information received from the administrative record. He stated that the agreed upon changes are incorporated in a revised exhibit C, the supplemental report presented to the Council prior to this evening's meeting.

Planning Manager Rowe addressed the following modifications:

- 1) Vegetative buffers around the pond. He stated that the EIR recommends that all ponds on site have a 10-foot buffer around them to protect the red legged frog, an endangered species, and to provide a bio filter to preserve water quality. The means to achieve this is by providing a 10-foot area of tall unmaintained grasses. He informed the Council that the applicant objected to the 10-foot buffer requirement adjacent to areas of play as the applicant does not believe that the mitigation is necessary because the analysis of water samples indicate that there is not a problem with fertilizers or pesticide runoff. Another reason cited at the July 1 meeting is that the tall grass would obstruct views of the pond and would trap golf balls that might otherwise roll onto the pond if a ball is hit poorly. He stated that in lieu of the tall grass it was agreed that other methods could be provided such as low growing groundcover with irrigation provided beneath instead of overhead irrigation; mulch; or other maintained surfaces to achieve the same result. He referred the Council to condition 2d located on page 2 of Exhibit C contained in the supplemental memo. He said that it was staff's belief that there was agreement on July 1, in concept, to accept the change of establishing performance measures rather than imposing a specific design for the buffers.
- 2) Water Quality setback. He indicated that the EIR recommends a water quality setback of 50-feet from the Correlitas Creek in its tributary. At the July 9 meeting, the applicant requested that the water quality setback be measured 30 feet from the highest anticipated waterline of the creek as determined by the Regional Water Quality Control Board. He stated that the City's consultants looked at this and indicated that this would be equivalent to using 50-feet. Therefore, condition 2c, page 2 of Exhibit C, reflects this change.
- 3) Encroachment into riparian habitat setback area. He said that the EIR recommends that a 100-foot activity setback be established from the edge of the high quality riparian habitat and a 25-foot setback from the lower riparian areas. He stated that this mitigation would require alteration of the course. As an alternative, it was agreed that the tees and greens that are retained in the encroachment area can be mitigated by reestablishing/protecting the riparian habitat on a 2-1 ratio within 3 miles of the encroachment of the Llagas Creek watershed. He indicated that this change has been incorporated into condition 5g, page 4 of Exhibit C.

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Planning Manager Rowe indicated that any other changes contained in the document are changes made to correspond to the agreed upon changes in terms of how to measure setbacks, and how one defines water quality setback system as performance measures. He stated that it is staff's recommendation that the Council adopt the resolution certifying the EIR under agenda item 22 with the amended findings contained in the supplemental report; and introduce the ordinance approving the zoning amendment, including exhibits A (map), B (list of approved uses), and C, the revised exhibits and conditions of approval following receipt of public testimony. He indicated that the second reading and adoption of the ordinance will occur on July 21. On July 21, staff will recommend the approval of the mitigation, monitoring, and reporting plan (MMRP). He indicated that the Council would need to adopt the MMRP before approving the project. He said that the MMRP would restate the mitigation or avoidance measures from the EIR, identifies who is responsible for compliance, the method of compliance and the timing of compliance of the mitigations. He informed the Council that the EIR consultants Michelle Yasney and Demitri Lucas with Powers and Associates; Dan Stephens consulting biologists; and Norm Hantzsche, consulting engineer were in attendance this evening and available to answer questions that the Council may have. Also, in attendance was Roger Beers, the City's EIR attorney.

Council Member Carr said that he continues to hear comments about a couple of specific items. He did not believe that there have been changes to these items in the EIR since the last time the Council reviewed the different items. These items relate to views, safe water, runoff containment, and traffic. He referred to the July 7 memorandum, page 9, condition B4 that talks about visual changes resulting from the proposed project. It is stated that the "applicant has submitted a detailed landscape plan for review by the City with authority reserved to the City to determine if the row of trees along Foothill Avenue should be removed or diminished." He said that in reading this sentence the City will have a point where it takes a look at the landscaping plan to address the concern.

Planning Manager Rowe clarified that the City's Architectural Review Board (ARB) would be the body reviewing the landscape plan.

Council Member Carr referred to page 12, item E4 relating to safe water/runoff containment. He noted that it is being stated that "The proposed project will result in a net increase of none point source pollutants entering surface waters. Without mitigations, this could be a significant impact. Specific mitigation measures have been identified on page 74 of the EIR that will reduce this impact to a less than significant level and that these will be imposed as conditions of approval of the project." He noted that for these mitigations the City will be able to address the issues of water quality and safe waters. He referred to page 12, item 6. He noted that this item talks about a potentially higher nitrogen loading levels in downstream waters and that it is stated on page 75 of the EIR that it will reduce the impact to a less than significant level, imposing conditions of approval on the project. He noted that the water contamination issues would be addressed with the identified mitigation measures. He referred to page 13, item G, traffic impacts. He read that "The proposed project will not generate traffic that would exceed the capacity of the existing roadway system. The City Council finds that this is a less than significant impact." He said that he continues to hear the concern that this is going to be a professional course. If it is to be used as such by the applicant, they will have to return to the City and reapply for that specific use. He sated that any increased traffic impacts would have to be mitigated as a result.

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Planning Manager Rowe indicated that the condition would limit the use to a maximum of 36 rounds of golf per day for approximately six months of the year. Uses such as charity golf course tournaments would require an amendment and that the City would need to evaluate the impacts, including traffic impacts, associated with the change in use, including any possible mitigations to be incorporated at that time.

Mayor Pro Tempore Sellers indicated that most of the individuals who reside in the area and those involved in the project were not around when the prior use produced significant traffic. He said that traffic impacts associated with the proposed use would be significantly less than the prior use of the site as "Hill Country." He felt that it was important to note that the original use of the site was far more significant than anything that is being proposed at this time.

Mayor/Chairman Kennedy opened the public hearing.

Stephen Sorenson, speaking on behalf of the applicant, stated that at the last meeting, the Council requested that City staff, the environmental groups and the applicant meet with the intent of working out resolutions of the outstanding issues. He said that the meeting was held and that it was successful in terms of resolving issues and making suggestions to meet the needs of all concerned as well as conforming to the requirements of CEQA. However, due to the time constraint involved, not all of the issues were resolved. He stated that the issues involve Exhibit C. He referred to item 2c, the red legged frog mitigation measures, specifically the vegetated buffers around the pond. He noted that this mitigation measure asks for unmaintained dense grasses at a distance of 10 feet around all ponds. He stated that the applicant proposes an equivalent/superior mitigation to this in that they would create vegetative buffers around the pond in those areas that are out of play. It is the theory that the applicant would like to create an attractive frog habitat in areas that are less risky to the frog so that there is not the risk of incidental take by having the frogs come onto the golf course. He indicated that Randy Long would support this theory and discuss the science behind this alternative mitigation. He indicated that Dr. Mark Jennings, a noted frog expert, was in attendance this evening who would address the habitat values.

Randy Long introduced Dr. Mark R. Jennings, a leading expert on the biology of the red legged frog as well as other special status species.

Dr. Mark Jennings said that he has studied the frog issues and their habitat requirements for the past 10 months. He stated that the golf course supports between 25-65 red legged frogs under present conditions and that they are doing reasonably well with the habitat items that have been proposed in the amendment. He felt that the area would achieve greater counts of frogs with the proposed mitigations at the Institute Golf Course which should continue in perpetuity. He stated that the frogs do alright in the present situation and will do even better when changes to the habitat are made by creating places for them to hide adjacent to the ponds with rock covers. He indicated that the rock covers will be compatible with the golf course. The buffers proposed in the non play area will also create more frog habitat and that one could only see the number of red legged frogs as well as tree frogs and toads going up in the future when the items are completed. He state that rock shelving or rock walls are being proposed around each pond that will have vegetation growing between them and that the rock covers

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will allow the frogs to hide. They will be low enough so as not to interfere with golf play while allowing the frogs to hide and be safe from birds and other predators. Under the present idea, the frogs will not want to sit on the short grass because it exposes them to predation. Therefore, the chances of an incidental take are greatly reduced.

Mr. Sorenson requested that the wording of the first sentence relating to the buffer be changed to read: "All ponds on site shall have a buffer around the pond perimeter of at least 10 feet in width which may consist of unmaintained or maintained dense grasses." This amendment would allow the applicant to achieve the environment that Dr. Jennings has discussed which would be hospitable to a frog and discourage the frog from going into an area where it may become at risk. He referred to section 8B3, last sentence relating to the nitrogen control plan. The sentence reads "The nitrate loading from all sources shall be demonstrated to not exceed the estimated nitrate loading that would have occurred from pre project conditions. That is, nitrogen loading on the whole site when it contained the 40-acre golf course which is estimated in the EIR to between 18.7 and 38.4 milligrams per litter." He said that the issue he has with this sentence is a technical one. He stated that currently the water in the aquifer used to irrigate and from which they pump is at a level of 48 milligrams per litter. He said that this requirement is stating that they should be between 18.7 and 38.4 milligrams per litter. prescribing that the applicant should purify the aquifer, requiring that the water going back in should be better than the water being pumped out. He requested that the last sentence be amended to read "...48 milligrams per litter" instead of the 18.7 to 38.4 milligrams per litter or something as simple as "Shall not degrade the aquifer." If the aquifer level changes and gets better, the applicant would not do anything to degrade the aquifer. He felt that this would satisfy the requirement of the mitigation.

Mr. Sorenson referred to item 8B13. He noted that a phrase was added to the final sentence to read: "... or a filtration system with treatment equivalent to a 25-foot vegetative buffer as approved by the City." He stated that the applicant agrees with this statement. However, if you look at item 8CJ, there are three asterisks after item j. The second asterisk appears to be the same mitigation that he believed the typist forgot to include. He requested that the final version of these two items are consistent and incorporate the above phrase. Under other conditions 25 and 26, drainage conduits on Foothill Avenue, he stated that staff and the applicant did not have the opportunity to address these conditions at the last meeting. He said that the applicant is more than willing to help with these issues even though the EIR indicates that the project is not causing offsite flooding. Everyone recognizes that the conduits are undersized and that they need to be increased in size. He indicated that the applicant may not have the right to make the changes. Under item 25, the conduit that crosses Maple Avenue, is located on City property and that it is the responsibility of the City. He said that the applicant may not be able to go in and make the change on its own. The conduit as identified in item 26 is located on Foothill Avenue, ½ mile south of the project on private property in the County's jurisdiction. He requested clarification/modification of the wording such that should the applicant not be allowed to make changes by the property owner or the governing agency, the applicant has an out of the condition(s).

Mayor Kennedy recommended that the mitigation be amended to stipulate in cooperation or with the assistance of the City of Morgan Hill to come to a solution.

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City Attorney Leichter stated that it was her understanding that the concern, as stated by Mr. Sorenson, is simply, that the conditions be subject to landowner approval to enter onto property in order to make corrections.

Mr. Sorenson indicated that this is the correct interpretation and that this was the only language that he is seeking to add.

City Attorney Leichter clarified that the City cannot impose mitigation measures which are subject to the control of a third party. She stated that this is a legally implicit condition. However, if it would make Mr. Sorenson more comfortable, the City could stipulate that the conditions are subject to landowner permission to enter onto property and make the requisite changes.

Council Member Tate said that it was his understanding that there were two reasons for the 10foot buffer. He noted that Mr. Sorenson addressed one of the reasons relating to the frogs. He noted that there is also the contamination of the water preventing inflow into the ponds to contaminate the waters. He noted that Mr. Sorenson did not address this issue.

Mr. Sorenson agreed that he did not address the prevention of water inflow into the ponds to avoid contamination of the water. He felt that the grass proposed would be an excellent buffer. He said that there is a body of knowledge that states that the grass will filter any harmful contaminants from the water. The applicant has also conducted monitoring during the course of the temporary use permit which indicates that the water on site has not been contaminated by fertilization or pesticide. As part of the mitigation and monitoring plan, the monitoring will continue. He stated that the applicant is not objecting to the other conditions that are a part of item 2c concerning fertilization and watering. He said that the applicant could, in terms of an additional mitigation, place baskets on the mowers and capture the cuttings so that the cuttings do not get into the water.

Mayor Pro Tempore Sellers addressed nitrogen loading. He noted that Mr. Sorenson addressed the fact that the current water table is at a level that exceeds the levels mentioned. He inquired whether there was evidence of the 48 milligrams per litter prior to anything being done to the site.

Mr. Sorenson informed the Council that a test well exists that is operated by the Santa Clara Valley Water District located across the street from the property. It was his belief that the test results show that from 1997 onward the nitrogen in this well has gone down. In looking at the aquifer in this basin, the nitrogen level is at 68 milligrams per litter. Therefore, the water underneath the property is significantly better than the aquifer in general. He said that the applicant has used fertilizer and pesticides within the 10-foot buffer around the ponds thus far with no deleterious affects on the water. He stated that the applicant is willing to agree to the tenancy of item 2c regarding fertilizers and pesticides but requested the ability to use a catch basin when mowing the lawn. He stated that the applicant would agree to comply with the request to fertilize with a below ground drip irrigation system with the intent of avoiding spraying in the vicinity of the water in case the wind comes up.

City Manager Tewes indicated that the Council will be hearing more comments under the public hearing, indicating that there may be other issues raised by speakers. He stated that staff would

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appreciate the chance to have the City's consultant review the issues and explain the reasons for the recommended mitigation conditions.

Peter Keesling said that he has been a 25-year Foothill Avenue resident, approximately .9 miles south of the entrance used for the golf course/institute. He expressed concern with the resolution certifying the EIR for a project that was constructed without permits and without acknowledgment of the regulations associated with construction. He noted that several mitigations have been proposed, through the EIR, many that would affectively take care of the concerns of the residents based on the scientific evidence that has been presented. His biggest concern is whether or not there will be adequate monitoring of the project so that residents know that the mitigations are being implemented, noting that the applicant has already shown disregard for the rules. He was not sure whether there were methods available to monitor the project. He did not believe that there was enough independent knowledge of prior nitrate level testing to state that what has been done already may have raised the levels of nitrate to the level that they are now. He felt that this is something that needs to be addressed before the Council makes a final decision. He stated that citizens need to know that the mitigations will be implemented. He agreed that you cannot impose a condition upon an applicant that requires approval by a property owner. If the City is to state that the applicant cannot be forced to mitigate runoff because a private citizen does not authorize access to property, there is still the problem with the runoff. It was his belief that it was incumbent upon the applicant to find another way to mitigate the runoff problem.

JJ Vogel said that he was in attendance to receive the truth, equal treatment and accountability. He stated that he would stand behind Mr. Fry if he was right. However, he felt that there have been many different opinions regarding this project. He did not believe that this was a routine violation or mistake. He said that several local, state, and federal agencies have expressed concern with drainage, roads and highways. The city's draft EIR states a myriad of environmental hazards. The state water quality control board identified 26 environmental issues. He was not sure whether the site would be used for PGA tours. He informed the Council that a watch dog group is offering to act as an arbitrator and take the burden off everyone's back. He said that the Santa Clara County Grand Jury has forms that have been submitted about this application with more to be submitted. He reiterated that he would support Mr. Fry if he is correct and that he would support the City if it is correct. He just wanted to know the truth.

Keith Anderson, a volunteer for Environmental Advocate for South Valley Streams for Tomorrow, thanked City staff and the consulting team for doing a good job in preparing the EIR and going through the process that took over a year; and getting everyone to a point where the City is close to certifying the document. He thanked Planning Manager Rowe for his willingness to work with Streams for Tomorrow and providing them with the information sought to resolve their concerns. He stated that Streams for Tomorrow has resolved all of their issues at a staff level. He stated that he provided Mr. Rowe with a two page listing of minor errors of facts, omissions, and typos for Exhibit "C." It was his hope that this information would help present a cleaner document. He indicated that the best mitigation package for the golf course project presented to the Council was the one presented at the June 9 meeting. What the Council has before it is a slightly modified version of this document this evening. This is due to the fact that some environmental concessions have been made to the applicant. He indicated that he spent a lot of time looking at the modifications and stated that he was convinced that they are within the scope of the EIR process. He did not believe that the project has gone beyond the threshold of having the need to

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recirculate the documents or threats of litigation. It was his belief that the documentation before the Council is a legally defensible product. He stated that Streams for Tomorrow would have preferred the June 9 document but that they would support the document(s) before the Council this evening. He requested that the Council not approve anymore environmental concessions to the applicant for the illegal project. It was his belief that the Council has gone to the extreme of satisfying the applicant's needs. He felt that the Council would hear rejections of Mr. Sorenson's request regarding buffers around the ponds and that he would leave it to the City's consultants to present an update on this issue. He stated that Streams for Tomorrow would support the measure that is before the Council for certification.

Nathasha Wist thanked the City Council for approving Mori Struvi and several of the groundskeepers attendance at the IPM conference held in June, and that it was her hope that the City would continue to work with the County of Santa Clara toward implementing an integrated pest management program. She said that golf courses use a tremendous amount of pesticides, on average of 20 different insecticides, 25 fungicides, and 15 herbicides per course. She felt that this heavy use has contributed to increased rates of certain cancers and neurological illnesses among golf course superintendents. She said that this is the reason that there is a U.S. environmental protection agency paper on strategies for golf course superintendents associations for the implementation of an integrated pest management program. She expressed concern for the animals, red legged frogs and human beings. She informed the Council that a typical 18-hole golf course annually uses 50,000 pounds of dry and liquid chemicals, 7 times the amount used by large scaled agricultural use. She did not believe that this golf course is typical of a 50-acre turf course as it is a 128-acre turf golf course. She said that a typical golf course consumes 500,000-800,000 gallons of water per day. In reviewing the EIR, she saw where the applicant was out of compliance and in violations with the Clean Water Act and many other runoff acts. She indicated that in the plans she received, it continually mentions that the mitigations proposed would not satisfy the Clean Water Act. She could not understand why the City and the City Council does not insist that the applicant implement integrated pest management and reduce the amount of pesticides because there will be runoff year after year. She felt that that the aguifer was over the limit of nitrates. She stated that pesticides that go into the air in the form of pseudo estrogens and then sinks into the groundwater is a serious problem. She indicated that she tried to contact Mr. Sorenson in order to urge him and his groundskeepers to attend the County's seminar and training, noting that she never heard back from Mr. Sorenson. Should the Council approve a golf course in the area, she recommended that it be a golf course that is ecologically designed.

No further comments being offered, the public hearing was closed.

City Manager Tewes noted that a number of speakers had kind remarks about the efforts of staff and the consultants in the preparation of documents and the series of meetings held over the past couple of weeks. He clarified that the meetings were as a result of Council direction to meet with consultants after they presented alternative mitigation measures that had the equivalent affect as those presented to the Council previously. Also, to show where in the administrative records there was scientific evidence to support them. He said that the meetings were not conducted to negotiate or to give environmental concessions. After a period of time, the applicant provided suggested alternative mitigation measures, and where there were scientific evidence in the record and where it could be determined that they were of equivalent value, staff included them in the document that is before the Council this evening. He said

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that each of the issues raised by the applicant this evening were discussed in a series of meetings, most recently on July 1, 2004. In some instances, alternatives were proposed for which there was no scientific evidence in the record for which staff could make a judgment that they were equivalent. Therefore, these were not before the Council this evening. He stated that staff followed the Council's direction to pursue, with the applicant, their alternative measures that were equivalent based on scientific information found in the record.

Michelle Yesney, Vice president with David J. Powers & Associates, informed the Council that her firm assisted City staff with the preparation of the EIR. She said that the principals of the integrated pest management are reflected in the EIR and in the recommended mitigation that is included in Exhibit C before the Council this evening. She said that the document refers to the "CHAMP," which includes the principals of integrated pest management and would document all chemicals applied to the golf course for various purposes and are part of the mitigation package. With regard to the new proposal before the Council this evening to revise the buffer around the ponds and the questions relating to nitrate loading, she would ask the technical sub consultants who have assisted in the preparation of the EIR to respond to these issues. She indicated that Norm Hantzsche will respond to the issues of nitrate loading and water quality in the pond and that Dan Stephens, H.T. Harvey and Associates, the ecologist, and the principal biologist for the project would discuss the specific issues before the City Council.

Norm Hantzsche, water consultant on the EIR team, addressed the nitrogen loading issue. He said that the applicant is suggesting that the nitrogen loading mitigation measure for the golf course be changed to reflect a condition whereby the loading limit would be set at a concentration equivalent to the existing background concentration of nitrate in the ground water of approximately 48 milligrams per litter. He said that this was not the proposal in the mitigation. He stated that the mitigation measure was developed by looking at the site's prior condition, using the best information available, noting that the site was changed by the time he began his analysis. Under the prior condition, the site was contributing less nitrate through percolation from the 48-acre golf course and other activities than was occurring in the groundwater from other agricultural activity in the area. He stated that the site, in the pre project condition, was a source of dilution to the groundwater nitrate concentration. This was the basis by which the project condition was evaluated and thus the range of nitrogen loading concentrations between 18-19 milligrams per litter and 38-40 milligrams per litter. He stated that this was the best estimate of what was occurring on the site before. If the project changes and becomes a site that is percolating and recharging the groundwater at 48 milligrams per litter, the ambient concentration, then the concentration will go up because the dilution affect that the pre project conditions had on the groundwater will be heightened. He said that one can expect the groundwater nitrate concentration to go up by this change. He stated that he could not agree with the suggestion to change the nitrogen loading concentration from the project to a higher concentration equal to the ground water concentration.

Mr. Hantzsche addressed the buffers around the ponds. He said that from a water quality perspective, the purpose of the buffer is two fold: 1) to provide an area where chemicals would not be applied where there is some spacing between the edge of the water and the area where pesticides and fertilizers would be applied. In the vent of overspray mistakes/spills, there would be a buffer area to protect water from this occurrence. 2) To provide a thick grass filtering mechanism so that the runoff from the maintained turf areas receiving irrigation and chemicals, be filtered to take out sediments and any chemicals that are

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carried by the water. This also helps to slow the water runoff into the pond. It was his understanding that one of the objectives of the applicant's proposal is to allow the golf balls to be carried into the lake as an additional hazard or challenge to the golf course. He felt that this was opposite the objectives of slowing down the flow of water and the movement of chemicals in the golf course, thus the conflict with the applicant's proposal and the objectives of the idea for a filtering buffer strip. With respect to the question of the sampling that has been conducted, he indicated that there have been some grab samples taken of the ponds. He received the results of approximately two samples from each of the ponds by the time the revised draft EIR was prepared last fall. It was his understanding that additional samples have been taken. He stated that he has toured the site with the applicant's water quality and hydrologist consultant who pointed out the location where the samples had been taken. He indicated that the samples were taken on the opposite side of the lakes from the areas being discussed where turf is to be maintained up to the edge of the water. The samples were taken around the outflow points of the lake and do not represent a true measurement of affects that may have been occurring. It was his belief that the EIR stated that the sampling done was favorable but that it was a snapshot and that things could change at any point in time. He said that the buffer is being recommended as a safety factor for filtering the runoff, capturing the pollutants and slowing the water flow into the lakes as well as maintaining a buffer whereby there would be no area where chemicals would be applied. He indicated that he had made a suggestion of a subsurface irrigated system as an alternative that might be of help to the applicant in devising a different groundcover or a way to maintain this area to have irrigated grasses without having to have above ground sprinkler or above ground chemical application.

Mayor Pro Tempore Sellers inquired whether there was a possibility of having a buffer/drain that would still allow course play. He further inquired whether an outflow sampling would provide a middle ground result.

Mr. Hantzsche indicated that the applicant is suggesting a change in language such that maintained turf could occur to the edge of the water, noting that this was not the consensus reached last week. Regarding the outflow sampling, he stated that he was not being critical of the method of sampling. He felt that the consultant conducting the sampling was thinking in terms of anything leaving the pond system. He said that this is a valid question and issue to address.

Dan Stephens, biological consultants to David Powers and Associates for the EIR, addressed the buffers around the ponds. He said that the overwhelming function of the buffer, with respect of the red legged frog, is the water quality function that it serves. He said that this is 90% of the value of the buffer to the red legged frog. He stated that an unmaintained buffer, 10 feet wide, would be visually distinctive. Therefore, the likelihood of groundskeepers straying into an area that is maintained turf to the edge of the pond is higher than it would be if there was a visually distinctive buffer of some type. With respect to the incidental take of frogs that may perch or stray from the pond into maintained turf to the edge of the pond, he would concur with Dr. Jennings that this would be unlikely. He stated that you cannot completely discount this as it is possible that frogs could be present at the interface of the pond. He said that the turf may come close to the edge of the pond but that there would still be some interface and that it would be more likely that frogs would be found in other parts of the pond where the vegetation shelves would be located away from the active play areas. However, he could not state that you could totally discount the possibility of frogs being present in this area. If there is active maintenance, there is

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a slight potential that there could be incidental taking. He noted that Dr. Jennings also referred to rock piles being placed as further enhancement for the frogs in and around the ponds. He stated that he does not know the exact location or structures in which these are being placed. He said that these would be enhancements for the frogs but that they would not replace or eliminate the need for any of the specific mitigation measures that he has incorporated into the recommendations.

Ms. Yesney addressed the concern expressed by a speaker about the likelihood that the various mitigation measures that have been identified would actually be implemented as proposed. She stated that she is working with staff to finalize the mitigation monitoring and reporting plan (MMRP). She indicated that a MMRP is required by CEQA and that the Council would be considering it in association with the second reading of the ordinance. She stated that part of the MMRP is very specific, and is an item by item listing of mitigations that will be accomplished; who would be responsible for their implementation, and who, in the City of Morgan Hill, will be responsible for making sure that the mitigations are implemented.

Mayor Pro Tempore Sellers said that should there be any transgressions and concerns by the neighbors that the monitoring is not taking place, what would be their recourse?

Roger Beers, consulting attorney said that the MMRP is a public document and should be made available to any member of the public. If citizens see something that they believe may be a violation of the provisions, they are free to report them to the City. The City would be charged to correcting any violations or to rectify the situation under the MMRP program.

City Attorney Leichter said that it is important to note that there are mitigation measures imposed as a result of the findings in the EIR. Specifically, items 25 and 26 of the conditions of approval. Staff is recommending these as conditions of approval as part of the overall project's mitigation measures. She clarified that they are not environmentally required but that staff believes that it is prudent to require the applicant to complete these conditions. It was her understanding from what Mr. Sorenson has stated that there is no objection by the applicant to these conditions. She said that the City cannot impose mitigation measures that would not feasible for the applicant to do. Staff would stipulate that these conditions would be subject to land owner cooperation. She said that it was her belief that flooding was not identified as an environmental impact from this project. However, this does not mean that flooding does not exist. She said that the City can require conditions of approval in order for the Council to issue the permit. Should these conditions not be accomplished, she said that the City would have to look at other methodologies/avenues to address the flooding issue, perhaps in cooperation with the County. She said that it was her belief that the conditions task Director of Public Works Ashcraft to oversee these conditions.

Planning Manager Rowe said that staff would agree to incorporate the phrase from item 8B13 to item 8CJ as identified by Mr. Sorenson.

Mr. Beers referred to the supplemental handout, page 7 of the findings, noting that item 12 implies that the MMRP is to be adopted today and clarified that it would be adopted at time of adoption of the ordinance. He recommended the following modification: "When it adopts the ordinance, the City

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Council will also approve a mitigation and monitoring plan..." As a further correction, he recommended that page 8, paragraph 2 under section II be amended to read: "...mitigation measures identified in the revised draft EIR as not presently incorporated into the proposed project, will be with modifications and additions set forth in the final EIR and adopted as conditions of the project's approval."

Council Member Tate noted that Mr. Anderson suggested that he submitted typographical corrections and inquired whether these have been incorporated into the document(s).

Planning Manager Rowe said that minor edits have not been incorporated this evening but that they would be incorporated in the final document.

Mr. Long responded to a statement made earlier that these are concessions being brought forth by Mr. Sorenson this evening. He said that these are mitigations relating to science. He said that the pond area lacks cover for the frogs and that the mitigation will take care of this concern. He said that animals will be drawn to cover as they do not like to be exposed. He does not want animals to be drawn to areas where they will be endangered or harmed. He has spoken with Fish and Wildlife staff and built in consultations with them about the incidental take. The first thing one needs to do is minimize anything that you can think about that could be harmful to the species. The Fish and Wildlife has already told the City that they are concerned about frogs being hit by golf balls. If the area is built with cover, the frogs will be attracted to the cover. He said that he will approach agencies to secure the appropriate permits. He stated that the applicant does not want to be placed in a situation where the City's conditions collide with other agencies. He stated that sampling results show low nitrates and no pesticides/fertilizers. He felt that turf grass would be a buffer. He has variations of water samples and stated that the results are all the same.

City Attorney Leichter said that the applicant may have had discussions with Fish and Wildlife and Water District staff. However, the record before the Council reflects that the Water District and the Fish and Wildlife have approved and supported the mitigation buffer. The City does not have a letter from the Fish and Wildlife Department to the contrary.

No further comments being offered, the public hearing closed.

Mayor Pro Tempore Sellers noted that the City is not proposing specific requirements for the pond but that the City wants the mitigation to be done right so that there is no impact to the water. It was his belief that there is significant latitude on how the applicant will meet the mitigation measure.

Planning Manager Rowe said that with the performance measures, it is being recommended that the buffer not be mowed or maintained with mechanized equipment. Chemicals or fertilizers cannot be applied to the surface and that the surface has to be designed to avoid/retard surface flow. If the plants meet the performance measures, it would satisfy the performance measure.

Mayor Pro Tempore Sellers said that he could not conceive a situation where the frogs would be harmed by a lawn mower as he does not see frogs sitting at the edge of the buffer area.

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Planning Manager Rowe said that the buffer provides that mechanized equipment not be used 10 feet from the pond in order to avoid incidental take. The mitigation provides the greatest amount of assurance that taking will not occur.

City Attorney Leichter noted that the City received testimony that the Federal Endangered Species Act has no gray area and that there is no accounting for frogs that are on the lawn when the mower comes by. When there is a take, there is a take. She indicated that the mitigation measure is designed to prevent the take.

Council Member Tate agreed with Mayor Pro Tempore Sellers comments but noted that the Council was here this evening as the result of asking the City's consultants and the applicant to get together to work out the issues. He noted that both were able to work issues and come to some agreement. However, they were not able to reach agreement on this point. Therefore, he would have to accept the City's consultants' input on what is legally required. He stated that he understands the logic of the argument but felt that the Council was at the point where it has to accept what is before it and move forward.

Action:

Council Member Tate made a motion, seconded by Council Member Carr, to <u>Adopt</u> Resolution No. 5827, Certifying the Institute Golf Course EIR, Including the Adoption of Findings of Overriding Consideration with Respect to the Cumulative Loss of Agricultural Land, incorporating the amendments as stated above.

Mayor Kennedy stated that he held a fundraising event 2.5 years ago at the Math Institute property. He requested that the City Attorney provide a written opinion from the Fair Political Practices Commission (FPPC) with respect to whether or not this constituted a conflict. He indicated that he has been advised that this does not imply or constitute a conflict.

City Attorney Leichter said that an opinion was rendered in June 2004 by the FPPC and that based on the time period identified and the amount of money received, it was deemed that it was not a violation of the Political Reform Act.

Mayor Kennedy stated that based on this opinion from the FPPC, he would be voting on this issue. He requested friendly amendments, independent from the EIR itself that in addition to the mitigation measures outlined that the Council ask staff to provide it with quarterly status reports. This would allow the Council to keep a watchful eye on what is taking place. Further that the Council assure a good neighbor policy. This could be in the context of a South County Joint Planning Advisory Agency or establishing a relationship with the San Martin Neighborhood Alliance. This would allow the City to monitor the progress of the project and not loose site of the neighbors' concerns.

Council Member Tate stated that he would support Mayor Kennedy's recommendation as a separate motion.

Vote: The original motion carried unanimously (5-0).

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City Attorney Leichter stated that the Council could direct the consultant to include as part of the mitigation monitoring plan that there is periodic communications with the San Martin residents through the San Martin Alliance Group. She informed the Council that the mitigation monitoring plan will require that the applicant pay for the cost of implementing the plan.

Action:

On a motion by Mayor Kennedy and seconded by Council Member Carr, the City Council unanimously (5-0) <u>directed</u> that staff provide quarterly reports to the City Council; and <u>directed</u> the consultant to include periodic communications with the San Martin residents through the San Martin Alliance Group as part of the mitigation monitoring plan.

23. **ZONING AMENDMENT, ZA-03-03: FOOTHILL – THE INSTITUTE** (Continued from 6/9/04) – *Ordinance No. 1687, New Series*

Planning Manager Rowe presented the staff report, requesting that the Council introduce the ordinance approving the zoning amendment to rezone the property.

Mayor Kennedy opened the public hearing.

Peter Keesling reiterated his concerns, noting that some of the concerns have been addressed by staff and the consultants. He indicated that this project proceeded for a number of years. He expressed concerned with traffic impacts. If the zoning amendment would impact traffic more than is being experienced, it would be of concern to San Martin residents.

JJ Vogel stated that he would support the project if what Mr. Fry states is true. He requested that a condition be included that stipulates that if anything is found to be wrong years down the road, that the City has the authority to shut down the business. Further, that the homeowners of the area receive a written guarantee from Mr. Fry that they would be safe from hazards. In addition, that the application be placed on hold as everything is convoluted.

No further comments being offered, the public hearing was closed.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Waived</u> the reading in full of Ordinance No. 1687, New Series.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council <u>Introduced</u> Ordinance 1687, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT ON A 192±-ACRE SITE CHANGING THE ZONING DESIGNATION FROM OPEN SPACE (OS) TO PLANNED UNIT DEVELOPMENT (PUD) LOCATED AT 14830 FOOTHILL AVENUE BETWEEN MAPLE AVENUE AND ROBIN AVENUE. (APNS 825-29-002, 043, 044, 045 AND

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825-30-007), by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

24. <u>ZONING AMENDMENT APPLICATION, ZAA 01-20: TENNANT-SAFEWAY</u> – Ordinance No. 1688, New Series

Planning Manager Rowe presented the staff report. He informed the Council that in April 2004, it came to staff's attention that the store, as it was being constructed, did not provide a 25-foot driveway. Based on where the side of the building was to be constructed, with an eight foot sidewalk, would result in a drive aisle of a little less than 22 feet in width. He indicated that the matter was brought to the attention of the Planning Commission where they recommended that the applicant pursue an amendment to modify the width of the landscape area in order to achieve the widest possible driveway to preserve the circulation aisle. He stated that this matter was considered by the Planning Commission on May 8 where the Commission provided a number of recommendations to correct the situation. He stated that the Safeway Store was not built larger than approved and that it appears to be an error where the location of the curb. This error came to light when staff measured the aisle width. He informed the Council that the Planning Commission is recommending that it approve an amendment to the precise plan with the following stipulations: 1) the drive aisle is to be 24-feet in width with a six foot landscape planter area in lieu of the sidewalk proposed continuously along the site; 2) the installation of distinctive payers to identify crossing points; 3) selection/tree heights and the location to be reviewed by the Architectural Review Board (ARB); 4) shrub planters adjacent to the columns to be repositioned between the columns to create a separation of the pedestrian areas from the circulation aisle; 5) the height of the metal buttresses and trellises to be reviewed as a design detail by the ARB; and 6) the installation of directional signs in clear/visible locations in the center.

Mayor Pro Tempore Sellers indicated that he has reviewed the staff report, including all of the Planning Commission comments. He felt that the Planning Commission did an excellent job in trying to make the area attractive. He did not know if there was much of a pedestrian access between the shops and the theaters. He said that the applicant did a great job of making the project environmentally attractive but this created a significant opportunity for young individuals to hang out outside the theater before or after a movie. He felt that this would create a traffic and safety issue. He inquired whether this concern has been reviewed by the police department and what type of lighting is being proposed. It was his belief that as the trees and shrubs grow, there is a potential of a nightmare to the situation as far as monitoring and keeping the youth safe.

Planning Manager Rowe indicated that the original approval of the PUD and the proposed revisions were reviewed by the City's development review committee which included review by the Police Department. He said that there are a number of issues that the police department has and has required, as part of the original PUD approval, changes in the lighting and landscaping plans to mitigate the problem. He informed the Council that the Planning Commission felt that the ARB, with a landscape architect on board, would be in a better position to address the specifics.

Mayor Pro Tempore Sellers indicated that he read the latitude afforded to the ARB. He felt that it was important to pass on to the ARB that they review the aesthetics and consider the safety issues as well.

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Council Member Carr noted that one of the items discussed at the June 8, 2004 memorandum to the Planning Commission was other site improvements that can be considered, specifically a sidewalk along the Vineyard frontage to improve the pedestrian movement. He inquired whether the Planning Commission considered this condition or whether the Safeway proponent ruled this condition out.

Planning Manager Rowe responded that the architect for Safeway indicated that they were not supportive of this condition. He stated that the condition was discussed at length by the Planning Commission and that it was the consensus that the improvements being proposed on site would provide a greater benefit to pedestrians. He said that there was some question about how many individuals would utilize a walkway given that there is a general lack of sidewalks across the street.

Council Member Carr indicated that one of his concerns about Tennant Station is that it should have four fronts to it, noting that it does not have four fronts. He felt that the Vineyard side is the back of the shopping center. It was his belief that this concern had been addressed but that it may be that it was not addressed well enough to make that side of the shopping center less of a back and less attractive to individuals. He felt that the installation of sidewalks, making it more pedestrian friendly, would help address this concern.

Planning Manager Rowe stated that through the review process, staff addressed the fact that you were not looking at the backside of a building from Vineyard. He stated that Council Member Carr was correct that the Tennant and Monterey frontages have sidewalks and that the Vineyard frontages lack sidewalks.

Mayor/Chairman Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) Waived the reading in full of Ordinance No. 1688, New

Series.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the

City Council <u>Introduced</u> Ordinance No. 1688, New Series, by title only as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO THE PRECISE DEVELOPMENT PLAN APPROVED UNDER ORDINANCE NO. 1546, NEW SERIES, FOR THE TENNANT STATION SHOPPING CENTER LOCATED IN THE PUD DISTRICT ON THE SOUTHEAST CORNER OF THE INTERSECTION OF MONTEREY ROAD AND TENNANT AVENUE (APN's 817-06-039, 040 & 41) by the following roll call vote: AYES: Carr, Chang, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

25. <u>ANNEXATION, ANX-03-04: BURNETT-MORGAN HILL UNIFIED SCHOOL</u>
<u>DISTRICT (MHUSD) SOBRATO HIGH SCHOOL</u> – *Resolution No. 5828*

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Planning Manager Rowe presented the staff report, the annexation of three parcels.

Council Member Carr indicated that the City-School Liaison Committee discussed ways to handle fees for these types of requests. He noted that under fiscal impact the applicant would be paying a per hour fee for processing the annexation application.

Mr. Rowe indicated that the fees proposed would pay for the City's expenses to process the annexation application.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

<u>Action:</u> On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Adopted</u> Resolution No. 5828, Approving the Annexation.

City Council and Morgan Hill Financing Authority Action

PUBLIC HEARINGS:

26. <u>ISSUANCE OF BONDS FOR MORGAN HILL POLICE FACILITY</u> – Resolution Nos. 5829, 5830, and MHFA-4

Director of Finance Dilles presented the staff report relating to the various bond documents that would lead to the financing of the new police facility. He said that the bond documents propose approximately a \$7.3 million bond that will be enough to purchase the police facility and provide part of the financing for construction. Staff is awaiting the Council's acceptance of the project in order to proceed with finalization of the bond issuance and acquisition. He indicated that the Council would be seeing this request at its next Council meeting. He stated that staff is expecting to receive an interest rate of approximately 5% on the net interest cost on the bonds.

Mayor/President Kennedy opened the public hearing.

City Treasure Roorda indicated that time is of the essence to take advantage of interest rates before they go up. The sooner the Council acceptance is granted, the sooner the City can go to the market and try to take advantage of the low interest rates.

No further comments being offered, the public hearing was closed.

Acting as City Council:

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5829, Making Finding of Significant Public Benefit.

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Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the

City Council unanimously (5-0) <u>Adopted</u> Resolution No. 5830, Approving Certain Documents in Connection with the Sale and Issuance of Morgan Hill Financing Authority

Lease Revenue Bonds.

Acting as Morgan Hill Financing Authority Commission:

Action: On a motion by Commission Member Tate and seconded by Vice-president Sellers, the

Finance Authority Commission unanimously (5-0) <u>Adopted</u> Resolution No. MHFA-4, Authorizing the Sale, Issuance, and Delivery of Lease Revenue Bonds and Approving

Certain Documents.

City Council Action

OTHER BUSINESS:

27. <u>HEARING FOR EXEMPTION TO UNDERGROUNDING UTILITIES – 16415</u> <u>MONTEREY ROAD</u>

City Manager Tewes presented the staff report. He stated that the property owner is seeking the opportunity to pay in lieu fees rather than performing the utility undergrounding. He indicated that staff recommends approval of the request.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the

City Council unanimously (5-0) <u>Granted</u> Exemption to the Requirement to Underground Utilities with Payment of In Lieu Fees for the Proposed Development at 16415 Monterey

Road.

28. REVENUE INCREASE REVIEW (Continued from 6/16/04)

City Treasurer Roorda indicated that this item has been before the Council at prior meetings. He said that in February, the Council adopted goals for the City budget for the upcoming fiscal year. He said that the strategic five year plan developed for the City identified that there is a strong potential for a shortage of revenue to meet the objectives of the Council over a five year period. He indicated that the Finance & Audit Committee has been looking at potential sources of revenue increases for the City and to come back to the Council with a plan on how it might deal or address this issue. He said that the first opportunity to present the findings of the Committee was at a Council meeting held on June 2 and that there was an opportunity for follow up discussion on June 16, 2004. At the June 16 meeting, there was interest expressed by the Council that the Committee provide some additional context around how the Council might consider various options about potential sources for revenue increases. In order to meet the request of the Council, the Finance & Audit Committee has returned with its original consideration

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and its originally ratings as well as a framework from which the Council might work together as a starting point. The Council can gather its own input, separate from the Committee. After the regular meeting of the Finance & Audit Committee where it set out to accomplish the Council's objective, new information came to light with regards to potential tax increases at the County level. He informed the Council that the Finance & Audit Committee held a special meeting last week to talk about and consider this potential source of revenue increase.

City Manager Tewes indicated that he learned from County staff that there had been a recent referral from a member of the Board that asked staff to consider certain revenue options. Among the option that County staff intends to bring back for Board consideration on August 3 is a proposal for a county-wide sales tax increase. He said that there are two variances to the proposal, both being for county-wide sales tax increases: 1) a ½% sales tax increase to be applied for general purposes to meet county needs; and 2) a ½% sales tax increase to be applied county wide with 1/3 of the proceeds of the tax to be allocated to incorporated cities within the County. He stated that County staff wanted to make it clear that this is an option that they are evaluating and would be presenting to the Board. There is no particular indication that the Board is supportive of the sales tax increase. He indicated that the law requires that if it is to be placed on the ballot, 2/3 of the Board members must approve it. He stated that County staff indicated that they were preparing the analysis at the suggestion that they identify options to bring back to the Board on August 3 as this is almost the last day in which a matter can be placed on the November 2004 ballot. It was the intention of County staff that if the tax measure made it to the November 2004 ballot, it would ensure that the tax could be implemented at the earliest time possible.

City Treasure Roorda indicated that the Finance & Audit Committee has come forward with a recommendation for Council consideration to make a recommendation back to the County in regards to whether or not to include the additional 1/4% sales tax that would result in potential revenue coming back to the City as part of the agreement with the County. He stated that there were a number of items that the Committee considered. He said that the countywide tax would not give any particular jurisdiction an economic advantage. One of the considerations of a city-wide sales increase as opposed to a countywide sales tax is that there might be potential negative impacts in terms of economic activity within the city. This would result in individuals buying less within the City limits because they have the opportunity to pay less tax elsewhere. By having a broader based sales tax; it would make it more challenging to select other areas where individuals might go for a lower sales tax. This option would not have as a direct impact on economic activity as may otherwise occur if it was a city only tax. Another consideration is that a tax at a city level could potentially increase or grow as the City grows whereas a tax at the county level would be depended upon an average across the County as a whole. He said that the potential growth of a revenue source, over time, may be faster than the other. He stated that the County is facing some difficult challenges and that this is one way to address the challenge; providing a benefit county-wide for county services that otherwise would not accrue. He said that there would be a lack of specificity in terms of how the County might spend the new revenue source as opposed to how the City might spend the revenue source. It was also felt that there might be additional momentum generated with more communities looking at benefiting from the tax increase to help preserve service levels and that this could potentially help in terms of an argument in support of the tax, possibly making it more acceptable to the voters. He stated that the taxes for a countywide proposal might result in revenues coming in sooner than would taxes from a City tax, supporting the objectives of the City of City of Morgan Hill Joint Special & Regular City Council, Special Redevelopment Agency, and Special Morgan Hill Finance Commission Meeting Minutes – July 7, 2004 Page - 29 –

trying to fill the gap that it currently has over the five year strategic objectives and plans. It is being recommended that the Council develop a recommendation to send back to the County with regards to the additional ½% sales tax, not necessarily taking a position on the County increase in particular. Should the County be going down this path, it should be within their objective to also include the benefits for the cities with the additional ½% sales tax.

Finance Director Dilles stated that the Finance & Audit Committee recommends that the Council take a position on the County proposal and direct the Council representative on the Santa Clara County Cities Association Board to present the Council's position to that Board. He informed the Council that it is his understanding that the Cities Association Board has this issue agendized for discussion tomorrow evening. Therefore, this would be an appropriate place to include the City's perspective on how this group could move ahead in discussions with the County.

City Treasurer Roorda felt that it was great to have another option for the City to consider and adds to the range of options the Council could consider.

City Manager Tewes indicated that the Cities Association has placed this matter on their upcoming agenda for consideration. He stated that Gillian Moran, Executive Director for the Cities Association, invited County staff to make a presentation so that the Cities Association would have the benefit of County staff's view. The County CEO responded that he felt that it was premature to make a presentation and that he was floating an idea, asking his professional colleagues for their thoughts on this proposal. He stated that the County CEO's intention is to present a recommendation at the County Board meeting on August 3. He shared with the County CEO that once this idea is out and he is asking for professional colleagues' thoughts; there would be a full public discussion about this opportunity by cities and the potential that councils might take a position. He indicated that the County CEO understood this but that he did not believe that it was appropriate given the nature of the referral from the County Board member for him to make a presentation to the Cities Association in advance of his recommendation to the County Board.

Mayor Pro Tempore Sellers noted that at the last Council meeting, the Council had a couple of suggestions, one from the Mayor that the City consider moving forward with a sales tax this fall. He did not believe that the Council should move forward with a sales tax this fall. He noted that there were several options that were more attractive. He felt that the Council is at a point where it should act with some diligence but that the Council does not need to act this fall. By acting this fall, he felt that the Council would be eliminating a few options. He did not believe that the atmosphere was such that the City was in a down turn. He did not believe that the Council needs to go to the community unless it absolutely has to. Further, he did not believe that the City was in a position where its resources have been diminished. He continues to believe that the 25% reserve is sufficient as a goal and that it is too high to go the community and state that the City needs additional revenue. He said that a 25% reserve was higher than most communities have in the region, noting that the City is above this level at this time and will be lowering to the 25% reserve level. Therefore, it would not make sense to go to the community for a revenue increase. It was his belief that the Council has time to consider several measures. He said that there is a unique opportunity with the county sales tax that the City should give consideration to. He stated that one of the biggest concerns he has with moving forward with a sales tax

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is that the City would end up with a higher sales tax level than the City's neighbors, noting that the City already has a significant lower level of sales tax income than a lot of the City's neighbors. He felt that an increase in sales tax would exacerbate this problem and make the City's economic development efforts that much more difficult. He felt that it might be worth considering participating or lending the Council's support to the notion of a ½% sales tax because all communities would be at the same tax rate. He noted that the County has needs that directly impacts this community (e.g., mental health services, etc.) if they are unable to provide services because of cutbacks. If the Council decides to participate in the County's sales tax effort, he would like to give consideration of the appropriate level of the City's reserve before the City begins to receive an additional revenue stream from the ½% sales tax. He did not believe that the Council needs to move forward with a fall ballot measure. He would like to have further considerations/options laid out before the Council moves forward with a measure.

Mayor Kennedy said that it is clear that the City has a structural deficit that will exhaust the City's reserves unless the Council takes action to correct it. He indicated that his proposal was that the City place a ½% sales tax for Morgan Hill on the November 2004 ballot. Having seen a proposal from the County executive that is a better alternative for many of the reasons stated in the staff report, he would favor supporting this and authorizing the Council's representative to the Cities Association to support the County's tax measure. He felt that the City needs a plan B in the event that the County does not move forward with the ½% sales tax measure. The City would not have a new revenue source and would continue to deplete its reserves. He noted that the next time that the City would be able to place a tax measure on the ballot is two years from now. He indicated that the City is focusing on cutting costs, noting that the City has made major cuts in expenditures and that the Council has also focused heavily on economic development activities. He did not believe that the Council has identified a way to close the structural deficit. He felt that the ½% county sales tax would allow the City to close the structural deficit. He recommended that the Council move forward with the support of the County's sales tax and do what it can to encourage the County Board of Supervisors to support moving forward with this action.

Council Member Tate appreciated the work that went into the format of the matrix by the Finance & Audit Committee and that the Council was able to work out its own opinions. He indicated that he rated the utility users' tax as one that should be considered. He felt that it was good to see that the County may be conducting a sales tax this fall. It was his opinion that no one would get anywhere this fall as there are still so many things up in the air such as the lash back from the State not having resolved its budget. He noted that the City does not know where it stands as a local jurisdiction being protected from the State at this time. Until these issues work themselves out, he did not believe that the Council can go to the voting public and state why it needs the money to fill the gap and how it will interact with the other issues at the County and State level. He felt that the public has to have the total picture of how government is taxing them. He did not believe that the City would receive the public's support on a sales tax. He agreed with Mayor Pro Tempore Sellers on the timing issue. He was pleased that the Council was prudent in its reserves as it gives the City some latitude. He would not object to suggesting that the County try the sales tax ballot measure as the City something can learn from the results of the County's ballot measure.

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Council Member Carr noted that the Council has considered this topic for a third or fourth time and that the Council has not received public comment on this issue. Based on the lack of public comment, he did not know if it would be a good time to place a measure on the November 2004 ballot. He did not know if citizens believe that the Council would make the right decisions without their comments. He noted that the Council put together a five year plan to bring the City into a structural position that would use the reserves, bringing them down. He felt that the Council needs to take action to solve the structural problem and bring the needed \$1.2 million revenue on a consistent basis. It was his belief that the Council has time to work on this issue. As the Council takes advantage of this time, it adds more pressure at the end, resulting in fewer options of going to the voters. He agreed that the Council needs to answer questions so that it can justify its decisions/actions. He felt that there were some things that the Council can do in off election years versus waiting two years. They may not be the best options and that they may not be the tax opportunities that would be appropriate for Morgan Hill. He recommended that the Council take another look at the options. He was pleased that Mayor Kennedy supported making a recommendation to the County. He stated that the Finance & Audit Committee was not willing to go far enough to state that the Council supports the ½% county-wide sales tax. Should the County place something on the ballot, it is recommending that the ½% sales tax be placed on the ballot to make sure that municipal entities receive a portion of it. He recommended that the City be ready to engage in discussions tomorrow night at the Cities Association meeting, actively support the sales tax. The City should also be supporting the ½% sales tax at the County Board level.

Council Member Chang indicated that she placed the County's ½% sales tax measure on the Cities Association agenda last week. She stated that she was disappointed that a County representative would not be in attendance and present the contemplated sales tax in detail. She indicated that she would do her best to represent the City's viewpoint at the Cities Association meeting tomorrow night. She stated that she could not support a city-initiated sales tax measure this fall because she did believe that the City was ready to do so. She did not know the details enough to fully support a county-wide tax measure. Should the County Board of Supervisors decide to move forward with a sales tax, she recommended that they do not forget cities. She felt that the City needs to be clear in its statement. She inquired whether the City of Morgan Hill was willing to support a county-wide sales tax.

Mayor Pro Tempore Sellers felt that there is a concurrence on the Council that should the County Board of Supervisors decides to move forward with a sales tax measure, that it be a ½% sales tax. He did not believe that the City should weigh in on whether it believes it is prudent to do so at this point.

Mayor Kennedy recommended that the City advocate to the County to proceed with the ½% sales tax on the November 2004 ballot.

Council Member Carr said that if the County was to place the ½% sales tax on the ballot, sharing 1/3 with the City and keeping 2/3 of it for themselves, he would be comfortable with the justification for the 1/3 that would be coming to Morgan Hill. He said that the budget process that the Council has used has been prudent, noting that the City has cut its budget significantly, and is about to cut significant city services. He felt that the Council could make justifications for needing the additional funds. He said that he could not make this justification for the County for their share of the dollars. He felt that the County needs to make this justification. What he has read in the paper and his experience of County services,

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there has been over \$300 million in cuts/layoffs. If the County has more room to make cuts and layoffs in their budget, it would surprise him why they are not proceeding with a measure to increase revenues or find a new source of revenue. He felt that this would be an easy question for the County to answer. He said that he understands why Mr. Kutras is not willing to send individuals to the Cities Association when he has not presented this information to his Board. It was his belief that the Council could be more pro active with its justification for its share of the dollars.

Mayor Kennedy said that if the Council was to recommend that the Council's representative to the Cities Association express that the City would support the County placing the ½% sales tax measure on the ballot, it would not be a strong endorsement if only half of the cities take the position of supporting the ½% sales tax. He inquired whether the Council should encourage other cities to come on board with the County's ½% sales tax measure.

Mayor Pro Tempore Sellers felt that other cities would weigh in on this issue at their own meetings. It has been his experience, in attending Cities Association meetings, that if a Council member shows up at the meeting and they do not have direct direction from their Council, they would not advocate a position. He stated that he was not comfortable in pushing the County to consider the ½% sales tax as it was his belief that the County has to do so on its own volition. He did not believe that the need was so acute that the City needs to push the County to place a sales tax measure on the ballot. However, the City needs to make sure that should the County decide to place a tax measure on the ballot, that the City's needs are met as well.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action:

On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Chang, the City Council unanimously (5-0) <u>Directed</u> that Council Member Chang, as the Council's representative to the Cities Association, to convey at tomorrow night's Cities Association meeting that if the County is to place a tax measure on the ballot this fall, that the City feels strongly that it is to be a $\frac{1}{3}$ % sales tax measure.

Council Member Carr noted that the there was not enough support on the Council to move forward with a city measure on the November 2004 ballot. He felt that it was imperative that the Council continue the discussions of asking questions so that the Council can start answering the questions about what is appropriate, appropriate timeframe, how to conduct public outreach, and continue on with this dialogue. He did not want to see the Council decide not to do anything in November and wait until next summer to start talking about November again.

29. <u>COMMUNITY INDOOR RECREATION CENTER BUDGET DIRECTION DURING CONSTRUCTION DOCUMENTS DESIGN PHASE</u>

Deputy Director of Public Works Struve presented the staff report. He indicated that the Council directed that staff proceed with the construction documents, indicating that staff is approximately 50% along this process. He said that staff anticipates completion of the construction documents in November followed by the preparation of bid documents and award of contract in March or April 2005. When staff

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started on the construction documents, staff hired Nova Partners to perform additional independent cost estimates for the City, working with staff and Noll & Tam to further confirm the budget. The process to refine the budget created evidence that there was a \$400,000 disparity in costs primarily attributed to soft cost. Although staff is anticipating higher management construction costs, the costs are consistent with what was experienced at the community and aquatics centers. In order to address the \$400,000 deficient, staff convened with the Indoor Recreation Center (IRC) Council subcommittee to look at additional value engineering items that may be taken to reduce the construction cost of the project. He noted that \$431,000 has already been reduced from the project through value engineering. He said that there is an average construction cost per square feet of \$295. He informed the Council that it was the consensus of the IRC subcommittee that there be no further value engineering because there would be a severe affect on the quality of the building and would impact cost recovery revenue generation. He said that Chuck Davis, senior member of Noll and Tam's design team, pushed away from the table, stating that looking at individual items would not be prudent. If the City has to reduce the cost of the building, he recommended that the City look at a major change in scope. The IRC subcommittee discussed the elimination of the gym or bidding the gym as an alternate. As staff analyzed the impact of the recommendation of the gym, it was realized that the cost recovery implications of either alternative would be great. He requested Council direction as to whether staff and the IRC subcommittee should work harder toward value engineering, indicating that this is not being recommended. As an alternative, staff and the IRC subcommittee is requesting that the Council consider additional funding to cover the \$400,000 project shortfall.

Mayor Kennedy indicated that staff identified \$4 million of flood control funding, some of which is needed to close the gap to build the library. He recommended that some of the flood control funds be earmarked for the IRC.

City Manager Tewes indicated that a couple of weeks ago, the IRC subcommittee presented a report to the Council about library financing and identified a series of recommended actions, that if adopted, could result in a library and redevelopment budget of \$18.2 million. He stated that not all of the \$18.2 million was going to the library as some of these funds would be going toward addressing downtown parking issues and the promenade. The subcommittee recommended that the library/redevelopment be established with a budget of \$18.2 million. He stated that there was some confidence that within this budget the Council could achieve a library and a lot of other objectives as well. He said that it would be possible to take some funds from the \$18.2 million and allocate approximately \$400,000 to the indoor recreation center project as well. With respect to the library, the Council was establishing an overall project budget and that it was not based on cost estimates. The Council had high confidence that the library cost would be approximately \$14.7 million. He said that some additional funds were identified to perform other good things as part of the library project if it was to be located in the downtown.

Mayor Kennedy recommended that the Council shift \$400,000 of the \$18.2 million to the IRC.

Mayor Pro Tempore Sellers stated that he and Council Member Chang have been serving on the IRC subcommittee. He said that the IRC subcommittee returned to the Council for additional resources not knowing where they might come from. The subcommittee and staff reviewed each line item with the goal of making value engineering cuts and looking at the soundness of the entire project. Reviewed were

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items that did not need to be done in order to reduce cuts (e.g., height of the roofs, and other details). He stated that the IRC project still ended up in a situation where it was \$400,000 short. He indicated that the IRC subcommittee could not justify additional cuts because it would cut into the soundness of the project. The IRC subcommittee did not believe that doing so would meet the community's need. It was pointed out that there would be a significant deficit in maintenance, a position that the City should not be in. He said that every time he gave thought about coming back to the Council requesting additional resources, he was concerned about what Council Member Tate would state. He said that the contingencies are larger than what were included in past projects. It is felt that the contingencies would be sufficient to meet the needs and that it was felt that there may be some roll over. There may be a possibility that the project would need the \$400,000 when it is completed. He felt that it was vital that the Council move forward this evening as construction costs go up daily. He noted that a funding source has been identified. If a funding source is not identified, the City would be looking at creating a project that would not meet the community needs, running the project in a deficit.

Council Member Tate said that it was the June 23 date that the Council was to have made a decision on the library. However, the decision was postponed until July 21. He said that the sequence might have worked had the Council acted on the Library issue. He did not understand how the Council could approve additional funding without knowing what the City will be doing with the library.

Mayor Pro Tempore Sellers felt that there was a \$3 million cushion to fund the library, noting that \$14 million is needed for the library and \$18 million in funding has been identified.

Mayor Kennedy noted that there is not a \$3 million cushion as the downtown requires additional parking and additional promenade. Even with these, he felt that there was some cushion in funds if the downtown location is chosen for the library.

Council Member Carr recommended that funding be considered after July 21 following a decision on the library. He stated that he had a concern when the City entered into the construction documents on the IRC project. This was also a concern to him when the Council majority decided to postpone the library decision as other things hinged on that decision. He felt that Mayor Kennedy may have identified a funding source but felt that the Council should take a look at the big picture before spending money that it may not have.

Mr. Struve indicated that staff and the architect would appreciate a decision on funding sometime in July. He informed the Council that the architect is well on schedule but that they need a decision this month.

There was no one in attendance to address the Council.

Action: Mayor Pro Tempore Sellers made a motion, seconded by Council Member Chang, to <u>utilize</u> \$395,000 from the flood control funding source identified by the City Manager and put this funding toward the indoor recreation center.

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Council Member Carr stated that he could not support the motion not because he does not support the project or finding the additional \$400,000. He said that he wanted to make the commitment of completing the library. He noted that there were some suggestions made earlier this evening that the library needs to be delayed. He indicated that the library is a higher priority on his list at this time.

Council Member Tate concurred with Council Member Carr's comments.

Mayor Kennedy stated that he would support the motion as he does not look at the action as taking away from the library. It was his belief that there were funds available to proceed with the library.

Vote: The motion carried 3-2 with Council Members Carr and Tate voting no.

Council Member Chang indicated that it was always her believe that this should not be IRC against the library. If the Council delays the IRC, it will be even more expensive, especially if the decision on the library waits until November.

30. RESPONSE TO GRAND JURY FINAL REPORT – INQUIRY INTO THE BOARD STRUCTURE AND FINANCIAL MANAGEMENT OF THE VALLEY TRANSPORTATION AUTHORITY (VTA)

City Manager Tewes presented the staff report, indicating that staff would frame the Council's discussion as a response to the Grand Jury.

Mayor Kennedy stated that he currently serves as the alternate Board Member to the VTA and having served two terms as a board member, he agreed with the County Grand Jury. Because of the fact that there is such a high turnover of board members of such a large body, it is an assignment that one should spend a lot of time on. He felt that it has become a staff driven organization out of default, except for the City of San Jose who has five members serving on the VTA board. He said that the City of San Jose and two members from Santa Clara County are the ones who essentially run the VTA. He stated that he would support all of the Grand Jury's recommendations as outlined. He did not know if this would go anywhere because you have the City of San Jose who has a vested interest that will fight the recommendation. He stated that he agreed with the recommended size of the board. He noted that the third recommendation relates to Bart where the Grand Jury is suggesting that Bart be slowed down.

City Manager Tewes said that the Grand Jury had a third finding and recommendation relating to the implementation of the transportation improvements. They suggested that VTA adopt a program of work that could be accomplished, expressing concern about the Bart project. He indicated that staff did not present the third finding/recommendation because the Civil Grand Jury specifically indicated that they were not seeking the City's input on this item.

Council Member Tate stated that the Grand Jury report made a lot of sense to him and that they made a strong case.

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Mayor Pro Tempore Sellers noted that the City of Morgan Hill has a 1/3 vote on the VTA and that this is a huge undertaking for any Council member to go through as the City is asked to represent the Cities of Gilroy and Milpitas as well.

Council Member Carr felt that the Grand Jury findings made a lot of sense. He stated the he is always concerned about adding more beaurocracy and another level of government. However, he did not know what else would be the answer to this item. He stated that would support the Mayor's position on this item.

There was no one in attendance to address the Council.

<u>Action:</u> On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) **Authorized** Mayor Kennedy to Submit a letter to the

Grand Jury supporting their recommendations 1 and 2.

31. REVIEW OF VALLEY TRANSPORTATION AUTHORITY (VTA) VALLEY TRANSPORTATION PLAN (VTP) 2030 PROJECT LIST

Mayor Kennedy indicated that Deputy Director of Public Works Bjarke serves on the Technical Advisory Committee of the VTA Board and that he had direct input on a lot of the issues in the VTP 2030. He was comfortable that the City has its projects included in the list. He noted that there is one project missing, the widening of Highway 101 from Cochrane Road south to Gilroy. He felt hat the Council needs to make a statement that this project needs to be added to the list. He did not believe that it was likely that it would be included in the list as it is late in the program. However, he felt that the Council needs to make the statement that this project needs to be placed on the list as expeditiously as possible.

Deputy Director of Public Works Bjarke said that staff could encourage VTA to consider the extension of Butterfield Boulevard to Hale Avenue as it looks at these projects. He said that the widening of Highway 101 to Gilroy is a \$164 million project and that it is carried on the list but is located well below VTA's funding limit of \$446 million. He indicated that the entire list of projects is \$1.9 billion. Therefore, the widening of Highway 101 is quite a way below the recommended funding line. He indicated that the Tennant Avenue overpass widening is contained in the Highway categories and is above the funding limit.

Mayor Kennedy felt that the City needs to start the process and hire an engineer/consultant to help the City work on the project study report and the environmental study reports in order to move the projects up the list.

Council Member Tate inquired whether the widening of Highway 101 to Gilroy could be done in increments.

Mayor Kennedy indicated that the City needs the cooperation and support of Gilroy because there is one vote shared between Morgan Hill, Milpitas and Gilroy.

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Mayor Pro Tempore Sellers said that a problem exists where Highway 101 narrows down to two lanes at the south end of Gilroy. He felt that there would be back up traffic in town based on traffic impacts.

Mayor Kennedy indicated that one of the suggestions is that Highway 101 be widened from Cochrane to Leavesly. He said that it would get expensive once you start to widen the overpasses. He said that it is not nearly as costly to widen Highway 101 from Cochrane to Leavesly.

Mr. Bjarke said that VTA likes to look at projects regional in nature and connecting communities. It was his belief that widening Highway 101 to Gilroy is the right thing to do.

Mayor Kennedy recommended that the Council move forward with a request to add the additional identified projects to the VTP 2030 list.

There was no one in attendance to address the Council.

Action: On a motion by Mayor Pro Tempore Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) <u>Directed</u> that staff forward a request to add the additional identified projects to the VTP 2030 list.

32. <u>EMERGENCY AUTHORIZATION FOR WELL DRILLING</u> – Resolution No. 5831

Director of Public Works Ashcraft presented the staff report.

There was no one in attendance to address the Council.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Adopted Resolution No. 5831, Declaring the Need for this Emergency Expenditure.

Action: On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) Appropriated \$350,000 from the Current Year Unappropriated Water Fund (653) Balance for this Project.

<u>Action:</u> On a motion by Council Member Tate and seconded by Mayor Pro Tempore Sellers, the City Council unanimously (5-0) <u>Approved</u> Expenditure of Funds, Not to Exceed \$550,000, for Construction of Emergency Well.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

Discussion of a library location ballot measure for the Council's July 21, 2004 meeting (Mayor Kennedy).

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ADJOURNMENT

There being no further business, Mayor/Chairman/President Kennedy adjourned the meeting at 11:00 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK, AGENCY/COMMISSION SECRETARY